

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHANTELLE KREUTTER, derivatively on
behalf of TELADOC HEALTH, INC.,

Plaintiff,

- v. -

Case No. 1:19-cv-5875-GHW-BCM

JASON GOREVIC, MARK HIRSCHHORN,
HELEN DARLING, MARTIN R.
FELSENTHAL, WILLIAM H. FRIST,
MICHAEL GOLDSTEIN, THOMAS
MAWHINNEY, THOMAS G. MCKINLEY,
BRIAN MCANDREWS, ARNEEK MULTANI,
JAMES OUTLAND, KENNETH H. PAULUS,
DAVID SHEDLARZ, and DAVID B. SNOW,
JR.,

Defendants,

and

TELADOC HEALTH, INC.,

Nominal Defendant.

JOINT STIPULATION AND [PROPOSED] ORDER

WHEREAS, on December 13, 2019, defendant Teladoc Health, Inc. (“Teladoc”) and the individual defendants (the “Individual Defendants,” and together with Teladoc, “Defendants”) filed a motion to dismiss the Verified Shareholder Derivative Amended Complaint pursuant to Rule 23.1 (the “Motion to Dismiss”) (ECF No. 39);

WHEREAS, on April 24, 2020, proposed intervenor Misty Pickett (“Pickett”) filed a motion for permissive intervention (the “Intervention Motion”);

WHEREAS, counsel for Pickett and Plaintiff Kreutter have advised counsel for Defendants that (i) Plaintiff Kreutter supports Pickett’s Intervention Motion; and (ii) Pickett and Plaintiff Kreutter propose to prosecute this action jointly pursuant to a shareholder derivative

complaint that will be filed forthwith, a copy of which counsel for Pickett has shared with Defendants for Defendants' consideration (the "Pickett Complaint"); and

WHEREAS, while Defendants do not agree that the Pickett Complaint cures the defects previously identified with the current operative pleading—including the failure to plead demand futility that is the subject of the pending Motion to Dismiss—Defendants believe that the most efficient path forward is to allow Pickett and Plaintiff Kreutter to jointly prosecute this action pursuant to the Pickett Complaint, so that the parties can avoid burdening the Court with litigation over intervention, and instead turn straight to the key issue: whether the Pickett Complaint adequately pleads demand futility under Delaware law and Rule 23.1;

IT IS HEREBY STIPULATED AND AGREED, by and between Pickett, Plaintiff Kreutter, Teladoc, and all Individual Defendants, as follows:

1. The pending Intervention Motion shall be denied as moot.
2. The pending Motion to Dismiss shall be withdrawn without prejudice.
3. The Pickett Complaint shall be filed within 7 days of the Court's order on this application, and it will become the single operative pleading in this derivative action, to be prosecuted jointly by Pickett and Kreutter.
4. Defendants do not waive, and expressly reserve, all rights to challenge the sufficiency of this pleading.
5. No later than 30 days after the filing of the Pickett Complaint, Defendants shall file a motion to dismiss for lack of standing due to failure adequately to plead demand futility pursuant to applicable Delaware law and Federal Rule of Civil Procedure 23.1.
6. Pickett and Kreutter ("Plaintiffs") shall file their opposition no later than 30 days after that filing.

7. Defendants shall file their reply no later than 18 days following filing of Plaintiffs' opposition.

8. Consistent with the Court's order at the November 13, 2019 conference (ECF No. 38), this briefing will address demand futility only, and Defendants reserve all arguments concerning the sufficiency of the allegations under Rule 12(b)(6) until a later time.

9. Plaintiffs shall not amend, or seek leave to amend, the Pickett Complaint in lieu of responding to Defendants' anticipated motion to dismiss (although Plaintiffs reserve the right to request leave to amend in the event the Court grants Defendants' anticipated motion to dismiss).

Dated: May 27, 2020

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP

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Counsel for Plaintiff Kreutter

SO ORDERED.

Dated: _____, 2020

Honorable Barbara Moses
United States Magistrate Judge